

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

CLIFFORD HILER,)	
)	
Plaintiff,)	
vs.)	NO. CIV-18-0773-HE
)	
JASON BRYANT, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

Plaintiff Clifford Hiler, a state prisoner appearing *pro se*, has moved for an emergency preliminary injunction ordering certain officials at the James Crabtree Correctional Center (JCCC) to provide him with an alternative source of protein on days when beans are served, as plaintiff indicates he has a food allergy to beans. He contends that, without a protein alternative, his Eighth Amendment rights are being violated.

Pursuant to 28 U.S.C. § 636(b)(1)(B) and (C), the matter was referred to Magistrate Judge Shon T. Erwin. Judge Erwin has issued a Report and Recommendation (the “Report”) recommending that the motion for preliminary injunction be denied. Plaintiff has objected to the Report, which triggers *de novo* review by this court of the proposed findings or recommendations to which objection has been made.

The “showing of probable irreparable harm is the single most important prerequisite for issuance of a preliminary injunction, the moving party must first demonstrate that such injury is likely before the other requirements will be considered. The purpose of a preliminary injunction is not to remedy past harm but to protect plaintiffs from irreparable

injury that will surely result without their issuance.” DTC Energy Group, Inc. v. Hirschfeld, 912 F.3d 1263, 1270 (10th Cir. 2018) (quotations and citations omitted).

Plaintiff is currently housed at North Fork Correctional Center, while the events complained of occurred at the James Crabtree Correctional Center. Doc. # 22, pp. 1-2. Further, plaintiff’s complaint lists only James Crabtree employees¹ as individual defendants. Plaintiff’s complaint and objection do not contain any allegations that he is receiving an improper diet at North Fork Correctional Center. There is thus no showing of any injury that is likely to occur. Further, plaintiff’s objection does not state any basis for avoiding the Report’s conclusion that, even without bean replacement, plaintiff’s constitutional rights have not been violated.

Accordingly, the Report and Recommendation [Doc. # 18] is **ADOPTED**. Plaintiff’s motion for a preliminary injunction is **DENIED**. This does not terminate the referral to Judge Erwin.

IT IS SO ORDERED.

Dated this 12th day of February, 2019.



JOE HEATON
CHIEF U.S. DISTRICT JUDGE

¹ Defendant Jason Bryant was the former Warden at JCCC. Rick Whitten was named as Warden at JCCC in September 2018.